Ahmad Daman Huri bin Hussein v Koo Chin Yau

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO P 1464 OF 1985
LIM BENG CHOON J
22 DECEMBER 1989

Damages (Personal Injury or Death) — Head injuries — Plaintiff's wife having to nurse and attend to his basic needs — Claim for general damages and cost of nursing care

Tort — Negligence — Motor accident — Liability agreed — Quantum of damages

The plaintiff, a security guard, was injured in a road accident. He was unconscious for four months after the accident upon which his behaviour changed drastically. He was noted to be severely psychotic and aggressive besides which his behaviour was reduced to that of an infant. He claimed damages for negligence. Liability was agreed at 55% : 45% as between the plaintiff and defendant. Special damages, loss of pre-trial earnings and loss of future earnings were also agreed based on 100% liability. Damages for pain, suffering and loss of amenities were left to be determined by the court. It was agreed that pre-trial nursing care amounted to 47 months and future nursing care to 60 months.

Held, awarding damages to the plaintiff as follows:

(1) The plaintiff was completely helpless in that his mental faculties were so reduced that he was unable to attend to his own needs. From a normal healthy person he has now been reduced to a living body without a spirit. Apart from the pain suffered, he has been deprived of any enjoyment of life. In the circumstances, he was awarded $90,000 in general damages.

(2) The plaintiff is entitled to claim compensation for the value of services that his wife rendered. Taking into consideration the distressing work which a person has to do to attend to the needs of the plaintiff, the value of nursing care was assessed at $400 per month. For the pre-trial period of 47 months, the sum awarded was $18,800. For the post-trial period of 60 months, the sum awarded was $24,000.

(3) Agreed special damages, pre-trial loss of earnings and the award on the cost of pre-trial nursing care to carry interest at 4% pa from the date of the accident to the date of trial. The award for general damages to carry interest at the rate of 8% pa from the date of service of the writ to the date of judgment. No interest was awarded in respect of agreed damages for loss of future earnings and on the cost of post-nursing care. The plaintiff was also awarded costs of the proceedings.

Cases referred to

1 *Kow Ah Dek & Anor* v *K Ratnasingam* [1981] 2 MLJ 24 (refd)
2 *Lim Eng Kay* v *Jaafar bin Mohamed Said* [1982] 2 MLJ 156 (refd)
3 *Cunningham* v *Harrison* [1973] 3 WLR 97 (folld)

Jagjit Singh for the plaintiff.
K Anthony for the defendant.

Cur Adv Vult

Lim Beng Choon J: In this motor accident claim, liability has been agreed at the ratio of 55% against the plaintiff and 45% against the defendant. The parties have also agreed on the following items of damages based on 100% liability:

(1) Special damages in the sum of $1,440.
(2) Loss of pre-trial earnings in the sum of $38,215.
(3) Loss of future earnings in the sum of $42,000.

Two items of damages are left to be determined, namely, (i) damages for pain, suffering and loss of amenities; and (ii) cost of nursing care. In assessing this nursing care claim, the parties have agreed that the period of pre-trial care comprises 47 months and the period of future care is 60 months. The following documents were tendered with the consent of the parties: (a) statement of agreed facts, exh 'AF'; (b) agreed bundle of documents, exh 'AB'.

The following facts are not disputed. Prior to the accident which occurred on 31 August 1984, the plaintiff was a normal healthy person and he was working as a security guard with a company known as Western Digital Malaysia Sdn Bhd. Upon meeting with the accident he was brought into the University Hospital Kuala Lumpur ('UHKL') unconscious. He was discharged from the hospital on 3 October 1984 but he was still unconscious. He regained consciousness only four months after the accident. Upon regaining consciousness, there was a drastic change in his behaviour. He was seen again in the surgical clinic of UHKL and noted to be severely psychotic and aggressive. Conservative as well as specialist treatments were administered to him but without much success. His aggressive behaviour remained unpredictable. It was also noted that the plaintiff had incontinence of urine and faeces as well as slurring of speech. He was, however, discharged from UHKL on 8 June 1985 as the doctors there were of the view that the prognosis for recovery was poor.

Later, the plaintiff was examined by Dato (Dr) N Arumugasamy, the consultant neurosurgeon, of Aru Neuro Sdn Bhd. This consultant gave his report on 11 April 1986 in which he said among other things that:

> His clinical status has continued unchanged inspite of the latter procedure. In addition, he has become incontinent of urine and faeces and developed slurring. He was a security guard before but was now totally incapacitated, boisterous at times and continuously troublesome. He had a tendency to 'buang buang barang dan juga pukul orang'.

He then went on to say:

> As such, I am inclined to think that his level of intellectual functioning could be improved by shunting his CSF away from his brain. However, the degree of recovery and return to a fair degree of normalcy is remote as this condition has continued in this state for some two years now. It is envisaged that he will require the care of adult all his life for his daily needs and show irreversible organic brain syndrome for the rest of his natural life.

It is clear from the medical reports, as well as the oral evidence given by his wife, that the behaviour of the plaintiff is now reduced to that of an infant. He cannot bathe, dry, or feed himself. He is capable of displaying petulance like that of a spoilt child and at times he can even turn aggressive. He has no control over the evacuation of his bowel and the passing of urine.

The plaintiff's wife said in her evidence (and I accept what she said) that she has five children and the eldest daughter was only 11 years old at the time of the accident. The wife has to attend to the needs of the plaintiff from the time he was discharged from the UHKL. At the same time she had to go out to work as a part-time washerwoman to maintain the family. Her monthly earning is only $150.

In my assessment of the claim for damages under the head of pain, suffering and loss of amenities on a 100% liability basis, I would like to refer to two Federal Court authorities. In the first case of *Kow Ah Dek & Anor* v *K Ratnasingam*,[1] the Federal Court refused to disturb the award of $70,000 for pain, suffering and loss of amenities made by the trial judge. The plaintiff there was described as suffering a minimal brain damage resulting in considerable change in his behaviour. He had lost confidence, had frequent headaches and he suffered decreased vision on his right eye. He also suffered from a loss of equilibrium — vertigo. But one important factor to notice is that the plaintiff in that case was able to continue to be employed as a teacher in the school of which he was a headmaster prior to the accident. In the second case of *Lim Eng Kay* v *Jaafar bin Mohamed Said*,[2] the Federal Court again refused to disturb the award of $80,000 given by the trial judge for the same head of damages. In that case, the plaintiff also sustained brain injury resulting in the reduction of his confidence to that of a child. His memory was poor and his behaviour was inappropriate, laughing unappropriately and unable to appreciate the proper atmosphere of the occasions or situations in which he was. Again there the plaintiff was not so helpless as to be unable to seek some kind of manual work which would not require great concentration or deep thinking. In the present case, the plaintiff is completely helpless — his mental faculty is so reduced that he is unable to attend to his own needs. From a normal healthy person he has now been reduced to a living body without a spirit. Apart from the pain he has suffered he has also been deprived of any enjoyment of life. In the circumstances I think an award of $90,000 is appropriate.

As to the claim for nursing care, it has been stated in *Cunningham* v *Harrison*[3] at p 98 that:

> It seems to me that when a husband is grievously injured — and is entitled to damages — then it is only right and just that, if his wife renders services to him, instead of a nurse, he should recover compensation for the value of the services that his wife has rendered. It should not be necessary to draw up a legal agreement for them. On recovering such an amount, the husband should hold it on trust for her and pay it over to her. She cannot herself sue the wrongdoer (see *Best* v *Samuel Fox & Co Ltd* [1952] AC 716); but she has rendered services necessitated by the wrong-doing, and should be compensated for it. If she had given up paid work to look after him, he would clearly have been entitled to recover on her behalf; because the family income would have dropped by so much: see *Wattson* v *Port of London Authority* [1969] 1 Lloyd's Rep 95 at 102, per Megaw J. Even though she had not been doing paid work but only domestic duties in the house, nevertheless all extra attendance on him certainly calls for compensation.

It is clear from the proposition stated in that case that the plaintiff here is entitled to claim for compensation for the value of the services that his wife has rendered. Now the plaintiff's wife had said in her evidence that even if she was willing to pay $500 pm to engage a person to attend to her husband, she could not find anyone to do the work. I am inclined to think that she has exaggerated as regards the sum which she is prepared to offer. However that may be and taking into consideration the distressing work which a person has to do to attend to the needs of the plaintiff, I assess the value of the nursing care as $400 per month. For the pre-trial period of 47 months, the sum awarded is therefore $18,800. For the post-trial period of 60 months or five years, I use the same multiplicand and the sum awarded is according to the annuity table, $24,000 (round figure).

The agreed special damages, pre-trial loss of earnings and the award on the cost of pre-trial nursing care will carry interest at the rate of 4% pa from the date of the accident to the date of trial. The award for pain suffering and loss of amenities will carry interest at the rate of 8% pa from the date of the service of the writ to the date of judgment. There will be no interest in respect of agreed damages for loss of future earnings and my award on the cost of post-trial nursing care. The plaintiff is entitled to costs of these proceedings.

Order accordingly.

Solicitors: *Jagjit Singh & Co; Nordin Toji & Yusof Ahmad.*

Reported by *Azra Moiz*